

REMARKS

The following is a discussion summarizing equity insurance products developed by AmerUS Life Insurance Company prior to the filing of the pending patent application and identifying the features described in the claimed subject matter of the present patent application that are improvements over those products. Specifically, the equity insurance products discussed below are AmerUS Life's equity-indexed life insurance products: *Independent Choices*, *FoundationBuilder Plus*, and *GenerationBridge*.

While the Examiner has requested information relating to "equity insurance products" (or "equity indexed life insurance products," as they are commonly referred to in the industry and as such will be referred to herein), in the interest of full disclosure, the Applicants also note that AmerUS Life has developed and marketed equity indexed annuity products since 1997. However, the scope of the present invention is directed to equity indexed life insurance products; not equity indexed annuities. Moreover, life insurance products and annuities products, including equity indexed versions of such products, are different and distinct products, as life insurance products are subject to different regulatory requirements and are more complex than annuity products due at least in part to the death benefit components.

The equity indexed annuity product developed by AmerUS Life prior to the development of the invention described in the Applicants' pending patent application includes AmerUS Life's *Equity Advantage Annuity*, *Equity Index Annuities*, and *Multi Choice Annuity* products. The *Equity Advantage Annuity* product was developed and first offered to the public in the summer of 1997. The *Equity Index Annuity* product was developed and first offered to the public in 1998. The *Multi Choice Annuity* product was developed and first offered to the public in December of 1999. These products are described in further detail in the Agent Reference Guides and other references cited in an Information Disclosure Statement accompanying this submission.

AmerUS Life's Product Embodying the Invention: Independent Choices

AmerUS Life's *Independent Choices* product, which is a fixed premium equity indexed life insurance product, is an embodiment of the invention described in the claims of the above-

referenced patent application. The *Independent Choices* policy form entitled "Fixed Premium Life Insurance" submitted to the Commissioner of Insurance of Iowa on June 23, 2000 and the Agent Reference Guide for the *Independent Choices* life insurance product dated October, 2000 ("10/00") are cited in the Information Disclosure Statement accompanying this submission. An *Independent Choices* brochure distributed about the same time as the Agent Reference Guide is also cited in the Information Disclosure Statement accompanying this submission. The above-referenced patent application describing the invention embodied in the *Independent Choices* product was filed on April 30, 2001, which is within one year of the first disclosure of the *Independent Choices* product to the public in the summer of 2000. Therefore, the *Independent Choices* product does not qualify as prior art to the present patent application.

AmerUS Life's Predecessor Life Insurance Products:

The FoundationBuilder Plus Equity Indexed Life Insurance Product and

The GenerationBridge Equity Indexed Life Insurance Product

AmerUS Life introduced its first equity indexed life insurance product, *FoundationBuilder Plus*, to the public in late 1998. The Agent Reference Guide for the *FoundationBuilder Plus* life insurance product dated October 1998 ("10/98") and the *FoundationBuilder Plus* policy form entitled "Flexible Premium Life Insurance" policy dated May 1, 1998 are cited in the Information Disclosure Statement accompanying this submission. A *FoundationBuilder Plus* brochure distributed about the same time as the Agent Reference Guide is also cited in the Information Disclosure Statement accompanying this submission. A second equity index life insurance product, *GenerationBridge*, was also introduced to the market around the same time. The Agent Reference Guide for the *GenerationBridge* life insurance product dated October 1998 ("10/98") and the 1998 *GenerationBridge* policy form entitled "Equity Index Account Value Endorsement" are cited in the Information Disclosure Statement accompanying this submission. A *GenerationBridge* brochure distributed about the same time as the Agent Reference Guide is also cited in the Information Disclosure Statement accompanying this submission. While *GenerationBridge* was a single premium equity indexed life insurance product designed for a specific insurance need, the inner-workings of the product and supporting

processes are substantially similar to the *FoundationBuilder Plus* product as initially developed and eventually implemented. Accordingly, the following discussion of the details of the implemented *FoundationBuilder Plus* product also applies to the *GenerationBridge* product.

In the initial proposed version of the *FoundationBuilder Plus* product the account value was segmented into several "buckets": the basic account bucket (i.e., the bucket into which where the premium initially flows and from which all the deductions are withdrawn), the 5-year fixed account buckets, and the 5-year equity indexed account buckets. Funds allocated to the 5-year buckets must stay in those buckets until maturity, at which time they roll back to the basic account for re-allocation.

The original product design of *FoundationBuilder Plus* called for a 3% guarantee to be applied to the policy *in aggregate* and be calculated only upon termination of the policy. In other words, there would be no independent interest guarantee applied to the equity indexed buckets if the interest credited to such buckets was not positive. Upon policy termination the interest credited to all the buckets were combined at the policy level. Therefore, interest credited to buckets in excess of the 3% guarantee on all buckets (indexed and traditional fixed) could be used to offset any shortfall of interest credited to the equity index buckets for purposes of satisfying the aggregate policy guarantee of 3%. In addition, the excess of the guaranteed cost of insurance charges over the current charges could also be applied to cover any index gain shortfalls relative to the cumulative guarantee.

Just weeks prior to the product launch in November 1998, the product design was changed due to potential regulatory concerns around the calculation of the guarantee. The change was reflected in the policyholder contract but the published marketing materials were not updated to reflect such change. The final *FoundationBuilder Plus* product design would calculate and pay the 3% guaranteed return within each separate equity index bucket, rather than at the policy level in aggregate (as indicated in the initial marketing materials), at the earliest of (1) death, (2) complete surrender, or (3) the maturity of each bucket. The company did not estimate the expected cost of the design change and did not alter its hedging strategy in response to the design change. The promised indexed-linked interest credits were hedged with options

“at-the-money” and the company chose to accept the additional risk presented by the last minute product design change.

Sales of *FoundationBuilder Plus* were not significant to the company's new business production during the first couple of years. When *Independent Choices* was being developed in the year 2000, the proposed increase in the guaranteed interest rate to 5% in that product design instigated the research into the risks inherent in providing a guaranteed interest rate applied to the equity indexed buckets and ultimately led to the present invention.

In contrast to the *FoundationBuilder Plus* and *GenerationBridge* products, each of the claims of the Applicants' pending patent application require, in some variation, the use of an estimated cost of an annual guarantee when determining a hedged investment budget. As can be seen by the above description and the references of the accompanying Information Disclosure Statement, neither version of the *FoundationBuilder Plus* product, nor the *GenerationBridge* product, teaches or suggests, among other things, “determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term, wherein at least a portion of the estimated cost of the annual guarantee is allocated to a risk fund and wherein the term has a term length greater than one year,” as claimed by the independent claims of the present application. Such functionality was not employed in the *FoundationBuilder Plus* or *GenerationBridge* products discussed above until after the development and release of *Independent Choices* in the fall of 2000. Estimating a cost of the annual guarantee at the start of a term period, as required in the claims of the Applicants' pending application, allows for proper allocation of expected expenses associated with assuming the risk of the hedged investment not outperforming the annual guarantee, which in turn allows the provider to offer a higher guaranteed return rate to its customers than was offered in previous products and higher potential interest crediting with proper funding of the risk fund. Therefore, for at least the above stated reasons, both *FoundationBuilder Plus* and *GenerationBridge* do not anticipate or render obvious any of claims pending in the Applicants' pending patent application.

In addition to the distinctions between both the *FoundationBuilder Plus* and *GenerationBridge* products and the claims of the Applicants' pending patent application

discussed above, several other claimed features are not taught or suggested by either the *FoundationBuilder Plus* product or the *GenerationBridge* products discussed herein. For instance, as can be seen by the above description and the references of the accompanying Information Disclosure Statement, neither the *FoundationBuilder Plus* product or the *GenerationBridge* product teaches or suggests at least the following claim limitations: (1) “wherein the estimated cost of the annual guarantee comprises an estimate of the funds for increasing the index-linked earnings to approximately equal the annual guarantee compounded over the term;” (2) “wherein the estimated cost of the annual guarantee is determined, at least in part, through a historical analysis comprising a back-casting of a historical performance rate of the index over an analysis period to determine a cost of the annual guarantee during a plurality of hypothetical terms of the index-linked life insurance product;” (3) “wherein the estimated cost of the annual guarantee comprises an estimate of the funds for increasing the index-linked earnings to approximately equal to the annual guarantee compounded over the term, taking into account the features [e.g., an annual minimum growth rate, an annual capped growth rate, and/or a participation rate] of the index-linked insurance product;” (4) “determining the hedged investment budget includes deducting from the projected annual fixed income yield a product spread and the estimated cost of the annual guarantee;” and (5) “allocating the deducted estimated cost of the annual guarantee to the risk fund.”

Patentability of Claims Over Disclosed Prior Art

For the reasons stated above, the claims of the Applicants’ pending application are distinct and patentable over AmerUS Life’s previous products. Furthermore, the claims of the Applicants’ pending application are patentable over the disclosed prior art of record for not only the above stated reasons, but also for the reasons included in previous Office Action responses, the Petition to Make Special, and those reasons discussed in previous Examiner Interviews.

Specifically, the disclosed prior art does not teach or suggest at least the limitations of “determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term, wherein at least a portion of the estimated cost of the annual guarantee is allocated to a risk fund and wherein the

term has a term length greater than one year,” as claimed by the independent claims of the present application.

The disclosed prior art also does not teach or suggest at least the following dependent claim limitations: (1) “wherein the estimated cost of the annual guarantee comprises an estimate of the funds for increasing the index-linked earnings to approximately equal the annual guarantee compounded over the term;” (2) “wherein the estimated cost of the annual guarantee is determined, at least in part, through a historical analysis comprising a back-casting of a historical performance rate of the index over an analysis period to determine a cost of the annual guarantee during a plurality of hypothetical terms of the index-linked life insurance product;” (3) “wherein the estimated cost of the annual guarantee comprises an estimate of the funds for increasing the index-linked earnings to approximately equal to the annual guarantee compounded over the term, taking into account the features [e.g., an annual minimum growth rate, an annual capped growth rate, and/or a participation rate] of the index-linked insurance product;” (4) “determining the hedged investment budget includes deducting from the projected annual fixed income yield a product spread and the estimated cost of the annual guarantee;” and (5) “allocating the deducted estimated cost of the annual guarantee to the risk fund.”

Therefore, for at least the above stated reasons, the Applicants respectfully assert that the claims of the Applicants’ pending application are in condition for allowance, and allowance of the claims is respectfully solicited.

CONCLUSION

The Applicants respectfully assert that the above description of prior equity indexed life insurance products developed by AmerUS Life Insurance Company, the identification of features of improvement over those original products described in the claimed subject matter of the present application, and the accompanying references cited in the accompanying Information Disclosure Statement, satisfy the Examiner's request for information under 37 CFR § 1.105. If there is any additional information that Examiner requires, or if are any questions or issues that may be resolved by a telephone conference, the Examiner is invited to call the undersigned attorney at (404) 853.8253.

The Applicants believe they have responded to each matter raised by the Examiner. Allowance of the claims is respectfully solicited. It is not believed that extensions of time or additional fees are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,



William T. Cook
Registration No. 58,072

June 19, 2007
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309
(404) 853-8000
(404) 853-8806 (fax)
SAB Docket No. 26548-0007